

MEMORANDUM FOR: Office of General Counsel

STATINTL ATTENTION : [REDACTED]
FROM : Acting Director of Personnel
SUBJECT : Request for Opinion

1. It was brought to our attention just recently that the WAEPA organization has been advised by the Department of Labor that it is subject to the provisions of the Employee Retirement Income Security Act (ERISA) of 1974. This causes us to be concerned with the possibility that that Act could be applicable to GEHA. In view of the criminal and civil penalties that are involved, it is requested that your Office advise us whether or not GEHA is covered by ERISA. Since this is a matter of deep concern to us, we should appreciate your opinion on this as soon as possible.

STATINTL 2. When [REDACTED] was the legal advisor to the VIP, he was asked by the Board of Trustees to ascertain, among other things, whether or not VIP was subject to the requirements for reporting and disclosure prescribed by ERISA. STATINTL After some months of research and discussions with officials at the Department of Labor and at Internal Revenue Service, [REDACTED] gave his oral report that the VIP was not required to submit to those provisions in ERISA. Bearing in mind that ERISA was a somewhat confusing and troublesome piece of legislation, especially during the period when Labor and IRS were trying to determine its requirements, we request that you again review the relationship of VIP to that Act and either reaffirm [REDACTED] opinion or prescribe to us the areas under which VIP must respond to the requirements for reporting and disclosure.

STATINTL [REDACTED]

Distribution:

Orig - Addressee
1 - A-D/Pers
1 - C/BSB
2 - DD/Pers/SP

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C/SSD - where
are we on
our report to
OGC or
GEO/K - Eris A?
ERISA
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The amendments to 26 CFR Part 1 and 26 CFR Part 301 are as follows:

INCOME TAX REGULATIONS

PARAGRAPH 1. Section 1.404(a)-2A is amended by revising the section title and the first sentence of paragraph (a). As amended, § 1.404(a)-2A reads as follows:

§ 1.404(a)-2(A) Information to be furnished by employer; taxable years ending on or after December 31, 1971, and before December 31, 1975.

(a) *In general.* For any taxable year ending on or after December 31, 1971, and before December 31, 1975, any employer who maintains a pension, annuity, stock bonus, profit-sharing, or other funded plan of deferred compensation shall file the forms prescribed by this section.

§ 1.6033 [Deleted]

PAR. 2. Section 1.6033 is deleted.

PAR. 3. Section 1.6033-2 is amended by revising paragraphs (a)(3)(ii) and (h)(3) to read as follows:

§ 1.6033-2 Returns by exempt organizations; taxable years beginning after December 31, 1969.

(a) *In general.* ***

(3) ***

(ii) For taxable years ending on or after December 31, 1971, and before December 31, 1975, every employee's trust described in section 401(a) which is exempt from taxation under section 501(a) shall file an annual return on Form 990-P. The trust shall furnish such information as is required by such form and the instructions issued with respect thereto.

(h) *Records, statements, and other returns of tax-exempt organizations.* ***

(3) An organization which has established its exemption from taxation under section 501(a), including an organization which is relieved under section 6033 and this section from filing annual returns of information, is not relieved of the duty of filing other returns of information. See, for example, sections 6041, 6043, 6051, 6057, and 6058 and the regulations thereunder.

§ 1.6047 [Deleted]

PAR. 4. Section 1.6047 is deleted.

PAR. 5. Paragraph (c) of § 1.6047-1 is amended to read as follows:

RULES AND REGULATIONS

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§ 1.6047-1 Information to be furnished with regard to employee retirement plan covering an owner-employee.

(c) *Penalties.* For civil penalty for failure to file a return required by this section, and for criminal penalty for furnishing fraudulent information under this section, see §§ 301.6652-3 and 301.7207-1, respectively.

REGULATIONS ON PROCEDURE AND ADMINISTRATION

PARAGRAPH 6. There is inserted in the appropriate place the following new section:

§ 301.6058-1 Information required in connection with certain plans of deferred compensation.

(a) *Reporting of information.* (1) *Annual return.* For each funded plan of deferred compensation an annual return must be filed with the Internal Revenue Service. The annual return of the plan is the appropriate Annual Return/Report of Employee Benefit Plan (Form 5500 series) as determined under these forms. The annual period for the annual return of the plan shall be either the plan year or the taxable year of the employer maintaining the plan as determined under these forms. These forms are hereinafter referred to as the "forms prescribed by section 6058(a)."

(2) *Plans subject to requirements.* For purposes of this section, the term "funded plan of deferred compensation" means each pension, annuity, stock bonus, profit-sharing, or other funded plan of deferred compensation described in part 1 of subchapter D of chapter 1. Accordingly, the term includes qualified plans under sections 401(a), 403(a), and 405(a); individual retirement accounts and annuities described in sections 408(a) and 408(b); and custodial accounts under section 403(b)(7). The term also includes: funded plans of deferred compensation which are not qualified plans; funded governmental plans and church plans, whether or not qualified (See sections 414(d) and 414(e)); and plans maintained outside the United States primarily for nonresident aliens (as described in subsection (b)(4) of section 4 of Subtitle A of Title I of the Employee Retirement Income Security Act of 1974; (88 Stat. 840)). The term does not include annuity contracts described in section 403(b)(1) or individual retirement accounts (an individual participant or surviving beneficiary in such account must file under paragraph (d)(2) of this section) and bonds described in sections 408(c) and 409.

(3) *Required information.* The information required to be furnished on

the forms prescribed by section 6058(a) shall include such information concerning the qualification of the plan, the financial condition of the trust, fund, or custodial or fiduciary account which is a part of the plan, and the operation of the plan as shall be required by the forms, applicable accompanying schedules and related instructions applicable to the annual period.

(4) *Time of filing.* The forms prescribed by section 6058(a) shall be filed in the manner and at the time as required by the forms and related instructions applicable to the annual period.

(b) *Who must file.* (1) *In general.* The annual return required to be filed under section 6058(a) and paragraph (a) of this section for the annual period shall be filed by either the employer maintaining the plan or the plan administrator (as defined in section 414(g)) of the plan for that annual period. Whether the employer or plan administrator files shall be determined under the forms prescribed by section 6058(a) and related instructions applicable to the annual period. Nothing in these forms shall preclude an employer from filing the return on behalf of the plan administrator, or the plan administrator from filing on behalf of the employer.

(2) *Definition of employer.* For purposes of subparagraph (1) of this paragraph, the term "employer" includes a sole proprietor and a partnership.

(c) *Other rules applicable to annual returns.* (1) *Extensions of time for filing.* For rules relating to the extension of time for filing, see section 6081 and the regulations thereunder and the instructions on the forms prescribed by section 6058(a).

(2) *Amended filing.* Any form prescribed by this section may be filed as an amendment to a form previously filed under this section with respect to the same annual period pursuant to the instructions for such forms.

(3) *Additional information.* In addition to the information otherwise required to be furnished by this section, the district director may require any further information that is considered necessary to determine allowable deductions under section 404, qualification under section 401, or the financial condition and operation of the plan.

(4) *Records.* Records substantiating all data and information required by this section to be filed must be kept at all times available for inspection by internal revenue officers at the principal office or place of business of the employer or plan administrator.

(5) *Relief from filing.* Notwithstanding paragraph (a) of this section, the Commissioner may, in his discretion, relieve an employer, or plan administrator, from reporting information on the forms prescribed by section

6058(a). This discretion includes the ability to relieve an employer, or plan administrator, from filing the applicable form.

(d) *Special rules for individual retirement arrangements*—(1) *Application*. This paragraph, in lieu of paragraph (a) of this section, applies to an individual retirement account described in section 408(a) and an individual retirement annuity described in section 408(b), including such accounts and annuities for which a deduction is allowable under section 220 (spousal individual retirement arrangements).

(2) *General rule*. For each taxable year beginning after December 31, 1974, every individual who during such taxable year—

(i) Establishes or maintains an individual retirement account described in section 408(a) (including an individual who is a participant in an individual retirement account described in section 408(c)).

(ii) Purchases or maintains an individual retirement annuity described in section 408(b), or

(iii) Is a surviving beneficiary with respect to an account or annuity referred to in this subparagraph which is in existence during such taxable year, shall file Form 5329 (or any other form designated by the Commissioner for this purpose), as an attachment to or part of the Form 1040 filed by such individual for such taxable year, setting forth in full the information required by that form and the accompanying instructions.

(3) *Special information returns*. If an individual described in subparagraph (2) of this paragraph is not required to file a Form 1040 for such taxable year, such individual shall file a Form 5329 (or any other designated form) with the Internal Revenue Service by the 15th day of the 4th month following the close of such individual's taxable year setting forth in full the information required by that form and the accompanying instructions.

(4) *Relief from filing*. The Commissioner may, in his discretion, relieve an individual from filing the form prescribed by this paragraph.

(5) *Retirement bonds*. An individual who purchases, holds, or maintains a retirement bond described in section 409 may be required to file a return under other provisions of the Code.

(e) *Actuarial statement in case of mergers, etc.* For requirements with respect to the filing of actuarial statements in the case of a merger, consolidation, or transfer of assets or liabilities, see section 6058(b) and section 414(l) and the regulations thereunder.

(f) *Effective dates*—(1) *Section 6058(a) requirements*. The rules with respect to annual returns required under section 6058(a) (the rules in this section, other than paragraph (e) thereof) are effective for plan years beginning after September 2, 1974.

(2) *Section 6058(b) requirements*. The requirements of section 6058(b) relating to mergers, etc., and paragraph (e) of this section are effective on September 2, 1974, with respect to events described in section 6058(b) occurring on or after such date.

PAR. 7. Section 301.6652-3 is amended by adding a new paragraph (a)(3) to read as follows:

§ 301.6652-3 Failure to file information with respect to employee retirement benefit plan.

(a) *Amount imposed*. ***

(3) *Annual return of funded plan of deferred compensation*. Under section 6652(f) the amount described in this subparagraph is imposed in each case in which there is a failure to file the annual return described in section 6058(a) on behalf of a plan described in § 301.6058-1(a) at the time and in the manner prescribed therefor (determined with regard to any extension of time for filing). The employer maintaining the plan is liable for the amount imposed with respect to a failure to so file the annual return in each case in which the employer must file the return under § 301.6058-1(a). The plan administrator (within the meaning of section 414(g)) is liable for the amount imposed in each case in which the plan administrator must file the return under § 301.6058-1(a). In the case of an individual retirement account or annuity described in section 408, the individual described in § 301.6058-1(d)(2) who must file the annual return under § 301.6058-1(d) is liable for the amount imposed with respect to a failure to so file the annual return. The amount imposed is \$10 for each day during which the failure to file the annual return on behalf of a plan for a year continues. However, the total amount imposed with respect to a failure to file on behalf of a plan for any year shall not exceed \$5,000.

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[FR Doc. 78-18800 Filed 7-3-78; 4:23 p.m.]

[6560-01]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL

PROTECTION AGENCY

[FR 923-4; PP 7E1968/R154]

SUBCHAPTER E—PESTICIDE PROGRAMS

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Dimethyl Tetrachloroterephthalate

AGENCY: Office of Pesticide Programs, Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the herbicide dimethyl tetrachloroterephthalate on upland cress. The amendment to the regulations was requested by the Interregional Research Project No. 4. This rule establishes a maximum permissible level for residues of the herbicide on upland cress.

EFFECTIVE DATE: June 7, 1978.

FOR FURTHER INFORMATION CONTACT:

Mrs. Patricia Critchlow, Registration Division (WH-569), Office of Pesticide Programs, EPA, 401 M Street SW., Washington, D.C., 202-426-2516.

SUPPLEMENTARY INFORMATION: On April 18, 1978, the EPA published a notice of proposed rulemaking in the FEDERAL REGISTER (43 FR 16352) in response to a pesticide petition (PP 7E1968) submitted to the Agency by Dr. C. C. Compton, Coordinator, Interregional Research Project No. 4, New Jersey State Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, N.J. 08903, on behalf of the Agricultural Experiment Station of Tennessee. This petition proposed that 40 CFR 180.185 be amended by the establishment of a tolerance for combined residues of the herbicide dimethyl tetrachloroterephthalate and its metabolites monomethyl tetrachloroterephthalate and tetrachloroterephthalic acid in or on the raw agricultural commodity upland cress at 5 parts per million (ppm). No comments or requests for referral to an advisory committee were received in response to this notice of proposed rulemaking.

It has been concluded, therefore, that the proposed amendment to 40 CFR 180.185 should be adopted without change, and it has been determined that this regulation will protect the public health.

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ROUTING AND RECORD SHEET

SUBJECT: (Optional)

OGC OPINION - GESTA/ERISA

FROM:

C/BSO

EXTENSION

NO.

DATE

20 JUL 78

TO: (Officer designation, room number, and building)

DATE

OFFICER'S INITIALS

COMMENTS (Number each comment to show to whom. Draw a line across column after each comment.)

STATINTL

DD/Kao/SP

20 JUL 78

21

apologized for
the delay. Dick

has prepared
a response which Dick
will review when
he returns from
vacation. We are
assured that a
response is forthcoming.

STATINTL

2.

DD/Pet JUL 1978

21 JUL 1978

3.

4.

5.

6.

7.

8.

C/BSO

8/22

10) After next year
talk with Dick
Please follow up.

STATINTL

10.

DC/BSO

8/30

10 to 11: Asked Dick
about this on
8/25. He acknowledged

having it for a long time
but gave no date when
he would have an
answer.

STATINTL

11.

C/BSO

8/22

10 to 11: Asked Dick
about this on
8/25. He acknowledged

12.

13.

14.

15.

11 - Please add to suspense
list and hold.

10 to 11: Asked Dick
about this on
8/25. He acknowledged

STATINTL

STATINTL

FORM 3-62

610 USE PREVIOUS EDITIONS

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